IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl. Revision Petition No.2106 of 2006
Date of Decision: 24.4.2007

Jaswinder Singh and others .

..... Petitioners.

Versus

State of Punjab.

..... Respondent.

CORAM: HON'BLE MR.JUSTICE MAHESH GROVER

....

Present: Shri R.S.Ghuman, Advocate for the petitioners.

Shri Kamaldeep S. Sidhu, D.A.G., Punjab.

Shri Vikas Bahl, Advocate for the complainant.

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Mahesh Grover,J.

The present revision petition is directed against order dated 24.8.2006 passed by the Sub Divisional Judicial Magistrate, Nawanshahr (heeinafter referred to as `the trial Court') vide which the petitioners have been summoned to stand trial for having committed offences punishable under Sections 494, 420, 467, 468, 471 read with Section 120-B of the I.P.C. pursuant to the proceedings under Section 319 of the Cr.P.C.

One Charanpreet Singh son of Satwant Singh was married to Harpreet Kaur daughter of Gurmail Singh on 3.4.1989. Thereafter, Charanpreet Singh is said to have gone abroad. Harpreet Kaur, whose

maiden name was Tarsem Kaur went to reside with her parents and gave birth to a son named Maninder Singh over there. She subsequently did not return to her matrimonial home forcing Charanpreet Singh to file a petition under Section 13 of the Hindu Marriage Act,1955 in the year 2003 for dissolution of marriage by way of a decree of divorce. The said petition was allowed on 9.1.2004. Charanpreet Singh thereafter married one Kuldip Kaur on 3.3.2004. Subsequent thereto, complainant-Harpreet Kaur alias Tarsem Kaur filed a complaint against said Charanpreet Singh and a number of his relations which was registered as F.I.R. No.379 dated 4.11.2004 under Sections 420, 567, 468, 471, 494, 120-B of the I.P.C. at Police Station, Banga. The police, after investigation, found the allegations against the petitioners to be false and accordingly, their names were kept in column no.2 of the report under Section 173 of the Cr.P.C.

The trial qua the other accused persons against whom the police prima facie found some material to establish their complicity in the offence proceeded. During the course of proceedings, the statement of the complainant was recorded.

Thereafter, an application under Section 319 of the Cr.P.C. was moved for summoning of the petitioners as additional accused in the case. The said application has been allowed by the trial Court by the impugned order which has resulted in the filing of the present revision petition.

Learned counsel for the petitioners contended that the reading of the entire statement of the complainant does not establish any role of the petitioners in the commission of the alleged offences and that the impugned order has been passed in complete disregard to the observations of the Apex Court which has time and again held that the concerned Court before

exercising its power under Section 319 of the Cr.P.C. should have sufficient material which could persuade it to come to a conclusion that the persons so sought to be summoned have a fair chance of being convicted.

Learned counsel for the State and the complainant have opposed the prayer made in the petition by contending that there was sufficient material before the trial Court to pass an order in exercise of its power under Section 319 of the Cr.P.C. and there is no infirmity in the impugned order.

I have heard the learned counsel for the parties and have perused the record. In my opinion, this petition deserves to be accepted. The legal position regarding summoning of an additional accused to face trial pursuant to the provisions of Section 319 of the Cr.P.C. is well settled.

In Michael Machado & anr. Versus Central Bureau of Investigation & anr., 2000(2) R.C.R. (Crl.) 75 (S.C.), their Lordships of the Supreme Court while construing the words "the court may proceed against such person" appearing in Section 319 Cr.P.C., held that "the power is discretionary and should be exercised only to achieve criminal justice and that the court should not turn against another person whenever it comes across evidence connecting that other person also with the offence." It was further held that "a judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence."

In Krishnappa Versus State of Karnataka, 2004(4) R.C.R. (Criminal) 678, the Apex Court set aside the order of the High Court vide

which the revision petition preferred against the order of the trial Magistrate dismissing the application of the State filed under Section 319 of the Cr.P.C. was accepted. The relevant extracts of that judgment are reproduced below:-

> "It has been repeatedly held that the power to summon an accused is an extraordinary power conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against who action has not been taken.
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> .... Though an order under Section 319 Cr.P.C. summoning a person can be made on fulfillment of the conditions stipulated therein even when the proceedings had earlier been quashed, but in the present case the Magistrate did not dismiss the application merely on the ground of the proceedings having been quashed against the appellant. The Magistrate first on examination of evidence came to the conclusion that the possibilities of the appellant being convicted were remote and, thereafter made a passing reference to the factum of the proceedings having been quashed in the year 1995. In Ram Kishan Rohtagi's case (supra), while holding that despite proceedings having been quashed, a person can be proceeded with, a note of caution was added that the power under Section 319 Cr.P.C. was discretionary and had to be used sparingly only on the existence of compelling reasons.
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> The court, while examining an application under Section 319

Cr.P.C., has also to bear in mind that there is no compelling duty on the court to proceed against other persons. In nut shell, it means that for exercise of discretion under Section 319 Cr.P.C., all relevant factors, including the one noticed above, have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused."

A learned Single Judge of this Court in Jarnail Kaur Versus State of Punjab, 2004(2) R.C.R. (Crl.) 270, while relying on the judgment of the Supreme Court in Michael Machado & Anr. Versus Central Bureau of Investigation & Anr. (supra) held that for summoning of a person as additional accused, it is not enough that the Court entertained some doubt from the evidence about the involvement of another person in the offence, but it must have reasonable satisfaction from the evidence already collected.

Almost similar view was taken in Isham Singh and others Versus State of Haryana, 2004(2) R.C.R. (Crl.) P.&H. 279.

Now, I turn to the instant case. The learned trial Court has passed the impugned order after recording the statement of the complainant, which has been placed on record as Annexure P9. The relevant extracts of the statement, Annexure P9, pertaining to the accusation against the petitioners are reproduced below:-

"My husband Charanpreet Singh went abroad in the year 1990 and the other members of in-laws family, who are present in court and Jaswinder Singh & Charanjit Kaur and Nasib Kaur, started mentally and physically torturing me, who are not

present in the court today and they have not been challaned by the police.

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All the accused who have not been challaned too committed the offences of harassment & criminal mis-appropriation and they too knew about the subsistence of my marriage with Charanpreet Singh and thus they are also guilty of offence u/s 406/498-A/494,I.P.C."

When the above reproduced statement of the complainant is examined in the light of the law laid down by the Supreme Court as well as this Court, I do not find any ground to sustain the impugned order. A perusal of the statement of the complainant shows that apart from the vague and general allegations of harassment levelled against the petitioners, there is no material on record which could have prompted the trial Court to come to a conclusion that the trial, if taken to its logical end, would result in their conviction. Besides, the trial Court could not have been oblivious of the fact that according to the allegations of the complainant herself, her husband Charanpreet Singh had been living abroad since 1990 and the F.I.R. was lodged in the year 2004 subsequent to the decree of divorce having been obtained by him. Moreover, the petitioners are distant relations of Charanpreet Singh, who are sought to be embroiled in the controversy because of the marital dispute between the complainant and her husband. The marriage being fairly old, the allegations of ill-treatment and demand of dowry as well as mis-appropriation do not inspire confidence qua the petitioners as no such complaint was ever made for long period of fifteen years.

On the basis of the above discussion, it is held that there was hardly any material before the trial Court to pass an order summoning the petitioners pursuant to Section 319 of the Cr.P.C. to stand trial in the case.

Hence, the present revision petition is allowed and the impugned order is set aside.

May 24,2007 (Mahesh Grover)
"SCM" Judge